

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

JEFFERY BUSBY,

Plaintiff,

Civil Action No.: 16-CV-02156-JNE-FLN

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Jeffery Busby, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 637], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In June of 2015, Mr. Jeffery Busby contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicate that a Bair Hugger device was used during the original surgery.
3. On June 24, 2016, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. Initial efforts to have Mr. Busby complete the Plaintiff Fact Sheet were complicated by his number having been disconnected. A contact letter was also sent at this time.
5. Mr. Busby contacted counsel's office on December 2, 2016 in response to the contact letter and provided a new phone number.
6. Over the next few months, Counsel attempted, with some cooperation of Mr. Busby, to complete the Plaintiff Fact Sheet. While counsel has diligently worked on this issue, it is still incomplete as of today.
7. Following the last phone conversation with Mr. Busby in an attempt to obtain information to complete the Plaintiff Fact Sheet, phone calls by Kennedy Hodges staff on the following dates went unanswered, and were not returned:
 - March 21, 2017
 - April 25, 2017
 - July 14, 2017
 - August 9, 2017
8. Additionally, letters were sent to Mr. Busby on the following dates:
 - January 23, 2017
 - April 25, 2017
 - July 14, 2017
9. Unfortunately, counsel has still not received a Plaintiff Fact Sheet questionnaire from Mr. Busby.

10. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel requests that the current action not be dismissed with prejudice and that Mr. Busby be given a reasonable amount of time to contact counsel to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and continue the case.

Dated: August 10, 2017

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on August 10, 2017 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges
David W. Hodges